

June 5, 2007

Ms. Tam Doduc, Chair
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

STATE WATER RESOURCES
CONTROL BOARD
2007 JUN -6 AM 11:40

DIV. OF WATER RIGHTS
SACRAMENTO


LAGO di MERLO™
Vineyards & Winery

Re: Workshop Regarding Policy Direction on Water Right Enforcement

Dear Ms. Doduc:

We received notice of the upcoming referenced workshop regarding potential water right enforcement actions to be taken by the State Water Resources Control Board. We hold one water right License, 5 Permits, and one pending application for the diversion and use of water in Sonoma County. The face value of our existing and pending storage rights totals about 1,109 acre-feet storage, and additional rights are held for direct diversion. Our Licensed and Permitted rights have priority dates from 1973 to 1989, and cover the overwhelming majority of water developed on our property.

Firstly, our pending Application 31254 is relatively small and, I believe, innocuous. It seeks 10.1 acre-feet of winter season diversion to storage from the far upper reach of Fall Creek, and spills to our licensed/permitted 1,050 acre-foot Merlo Reservoir, and is tributary to Dry Creek (a highly regulated stream) tributary to the even more highly regulated Russian River. The subject reservoir was constructed in 1983 and was intended to be an aesthetic amenity and serve the landscaping needs of the nearby residence. During a Division staff inspection in July 1998 we learned that this small reservoir was considered unauthorized and requires a permit. We filed Application 31254 in 2001.

Based on Division staff's 1998 inspection and at their request, we filed petitions in November 2000 for our 5 Permits variously seeking extensions of time, consolidation of our places of use, and the naming of our existing permitted Reservoir #1 as appoint of rediversion for water diverted at our existing licensed/permitted Merlo Reservoir. While your staff apparently had some basis for requiring the change petitions, I understood that in general the petitions were something of a formality that would facilitate future flexibility in our management of water, i.e. rather than water from a Merlo Reservoir being tied to a specific place of use, the petitions would allow water from this Reservoir to be used anywhere within the collective permitted place of use. I really thought that the Division staff was trying to help. Division staff advised that changing the permits in this manner would also make it easier for State Water Board's Licensing Unit to issue licenses in the future. In addition, at the Division staff's suggestion, one of the change petitions sought to add frost protection in the event that a frost protection system is installed at a later date. We were not frost protecting at the time and to this day have not installed a frost protection system.

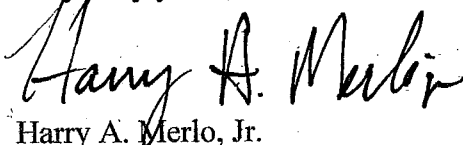
3495 Skaggs Springs Road
Geyserville, CA 95441
Phone 707.473-0146
Fax 707.473-0147
www.lagodimerlo.com

Processing of these rather straightforward petitions has not progressed very far since 2000. By letter dated March 2005 (over 4 years after the petitions were submitted), the Division staff directed us to enter into a Memorandum of Understanding (MOU) for a CEQA document. We were informed in this letter that our pending actions would be cancelled and that we would have to remove our existing facilities if we failed to abide. We submitted the executed MOU in September 2005. Since 2005 we have paid annual fees of about \$10,000 each year for these pending actions (about \$20,000 total so far). Each year that passes without completion of the process we will be required to pay an additional \$10,000 in pending petition fees. Progress by staff on the CEQA document has been slow, but billing us for annual fees has not been. In fact, it would seem to be a very lucrative program for the Division.

It is my understanding that there are a very large number of backlogged applications and petitions pending at the State Water Board, while in recent years only a handful of permits and change orders have been issued. The State Water Board's inability to expeditiously process pending applications and petitions, while collecting substantial annual fees (\$20,000 in our case, for pretty insignificant changes), leaves one with the impression that the lack of processing is somewhat self-serving - I sincerely hope that this is not the case! We are very hopeful that the Noticed Enforcement Workshop is not a prelude to enforcement actions against diverters like us. Many individuals have filed petitions in good faith (at your staff's direction) and have cooperated with the State Water Board's directives for CEQA review (at substantial cost in addition to fees) for projects that are largely existing and covered by existing rights.¹

My objective is to bring our project into conformance with State requirements. I have cooperated with your staff and made every reasonable effort to comply with their requests. I have paid substantial fees with the expectation that an environmental document would be expeditiously prepared and circulated. I sincerely trust that in your reevaluation of your enforcement policy you will take a global view of the State Water Board's goals, responsibilities, budget constraints, and staffing constraints, and conclude that an enforcement policy targeting diverters cooperatively seeking conformance with State law is counterproductive and makes no sense. I would also request that prior to undertaking additional enforcement activities, you process the workload you already have.

Very truly yours,



Harry A. Merlo, Jr.

¹ By use of GPS equipment, staff identified 8.8 acres in excess of the 50-acre place of use allowed by two of our permits (applications filed in 1989). This has more to do with improvements in mapping technology over the last 18 years than a compliance issue, in my view.